IN THE

# Supreme Court Of The United States

OCTOBER TERM, 1978

NO. 78-723

Guy Hamilton Jones, Sr. ..... *Petitioner*

V.

United States of America ..... *Respondent*

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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The Petitioner Guy Hamilton Jones, Sr., respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding August 4, 1978.

OPINION BELOW

The opinion of the Court of Appeals, reported as _____ F.2d _____, appears in the Appendix hereto. The ruling by Judge Harris for the Federal

Court of the Eastern District of Arkansas is not reported but is also in the Appendix herein.

## JURISDICTION

The judgment of the Court on Appeals for the Eighth Circuit was rendered on August 4, 1978. This petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254 (1), and under Rule 19, Revised Rules of the Supreme Court of the United States.

## QUESTIONS PRESENTED

I. Whether the Decision Below Is In Conflict With Applicable Decisions of This Court For a Hearing Under 28 U.S.C. Sec. 2255 In Regard To Matters Happening Outside of the Record .....

II. Whether the Decision Below Is Based On a Conflict With Decisions of this Court Relative to a Lack of Appeal in a Motion Under 28 U.S.C. Sec. 2255 and Most Clearly Under Suspension of Imposition of Sentence .....



III. Whether the Decision Below Is In Conflict With a Decision of This Court on the Right of a Defendant to a Speedy Trial.....

## STATEMENT OF THE CASE

This petition is presented because of the denial of a hearing on petitioner's motion to vacate in a criminal case under 28 U.S.C. §2255.

Petitioner was found guilty upon four counts of violation of federal income tax laws in the Federal Court of the Western Division, Eastern District of Arkansas, upon a second trial.

The first trial began July 10, 1972, and ended on July 18, 1972, with a sua sponte motion of mistrial by the presiding judge, the Hon. J. Smith Henley. This occurred after an in-chambers hearing near the end of the trial when the presiding judge was informed about the out-of-court acts of government attorneys and agents in contacting a trial juror for five days preceding.

Federal Judge Richard A. Dier of Nebraska, presided at the second trial of this cause which began on November 27, 1972. On December 4, 1972 Judge Dier summarily overruled petitioner's motion in double jeopardy.

During the course of the second trial, on December 7, 1972, Judge Dier suffered a fatal heart attack, and by agreement of the parties Federal Judge Oren Harris of Arkansas, presided over the trial through its conclusion the following day, on December 8, 1972.



Guilty verdicts were returned against the petitioner on each of the four counts and on April 3, 1973, Judge Harris fined the petitioner the sum of $5000 on count one, and suspended imposition of sentence on each of the four counts, placing petitioner on probation for a term of three years.

On March 26, 1976, petitioner timely filed his motion to vacate in this cause, pursuant to 28 U.S.C. §2255, seeking a hearing.

November 4, 1977 Judge Harris, District Judge, denied the petitioner a hearing on his motion.

By timely appeal, petitioner presented his petition for a hearing on his motion to the Eighth Circuit Court of Appeals.

On August 4, 1978, petitioner was refused his request for a hearing on his motion by the Eighth Circuit Court.

This petition is presented before this Court because the Eighth Circuit Court of Appeals ignored and refused to consider relevant, pertinent and controlling decisions of this Court, which were relied upon by petitioner.

## INTRODUCTION

Petitioner has only been seeking and only seeks his "day in court" in a hearing on a 28 U.S.C. 2255 motion to vacate his conviction in a federal court.

Petitioner has endeavored to confine his pleadings and arguments to his right to a hearing rather than to produce the law or argument on issues which would inevitably arise from the hearing itself.

However, in many instances, the law and circumstances which tend to prove the "right to a hearing" are inextricably bound to the legal issues of the hearing itself, so petitioner has had to proceed accordingly.

In an effort to insure justice, all that the petitioner has done and can do, is to present the decisions of this Court which, under all the facts and circumstances, govern and control in his request for a hearing. Petitioner cannot understand why the rulings and decisions of this Court have been ignored in the Court below and a decision in conflict with applicable decisions of this Court have been entered.



## REASONS FOR GRANTING WRIT

### I. The Decision Below Is In Conflict With Applicable Decisions Of This Court For a Hearing Under 28 U.S.C. Sec. 2255 in Regard to Matters Happening Outside of the Record.

All of the matters and events complained of by petitioner occurred outside of the formal trial proceedings, outside the province of the trial judge and outside of his knowledge or consent. As far as the records of the trial itself, that is, the first trial of petitioner, nothing is available; matters of proof were secured in a civil trial by petitioner against government attorneys and agents.

Petitioner on this point relied on *Machibroda v. United States*, 368 U.S. 487, 7 L. Ed.2d 473, 82 S. Ct. 510 (1962) and on *Fontaine v. United States*, 411 U.S. 213, 36 L. Ed.2d 169, 93 S. Ct. 1461 (1973), affirming *Machibroda.*

In *Machibroda* this Court said: "The factual allegations contained in the petitioner's motion and affidavit, and put in issue by the affidavit filed with the Government's response, related primarily to purported occurrences outside the courtroom and upon which the record could, therefore, cast no real light. Nor were the circumstances alleged of a kind the District Judge could completely resolve by drawing upon his own personal

knowledge or recollection". (The District Judge ruling upon petitioner's motion did not preside at the first trial which is the one complained of).

The mandate of this Court is clear. No effort has been made to distinguish *Machibroda* and *Fontaine* from the instant case. These decisions of this Court have simply been ignored.

## II. The Decision Below Is Based On A Conflict With Decisions Of This Court Relative To a Lack of Appeal In a Motion Under 28 U.S.C. Sec. 2255, and Most Clearly Under Suspension of Imposition of Sentence.

Much of the decision in the Court below was based on the fact the petitioner did not appeal his conviction and sentence. This Court, in *Kaufman v. United States*, 394 U.S. 217, 22 L. Ed. 227, 89 S. Ct. 1068, (1969) stated as the law: "Later, in *Townsend v. Sain*, 372 U.S. 293, 311-312, 9 L. Ed.2d 770, 784, 785, 83 S. Ct. 745 (1963), we pointed out the vital distinction between the appellate and habeas functions and concluded that habeas relief cannot be denied solely on the ground that relief should have been sought by appeal to prisoners alleging constitutional deprivations: 'The whole history of the writ—its unique development—refutes a construction of the federal courts' habeas corpus powers that would assimilate their task to that of courts of appellate review. The function of habeas is different. It is to test by way of an original civil proceeding,



independent of the normal channels of review of criminal judgments, the very gravest allegation ... The language of Congress, the history of the writ, the decisions of this Court, all make clear that the power of inquiry on federal habeas corpus is plenary.' "

The records reflect that the Eighth Circuit in at least two cases involving a §2255 motion, has ruled that the motion was being used as a substitute for an appeal, rather than denying it outright, and this since *Kaufman* (1969).

In its decision below the Eighth Circuit stated: "Jones has provided no explanation as to why he did not pursue the appeal procedure." Despite this statement by the lower Court petitioner had relied in his brief on a decision by this Court in *Andrews v. United States*, 373 U.S. 334, 10 L. Ed.2d 383, 83 S. Ct. 1236 (1963).

The record reflects that petitioner was fined $5,000 on count one of four counts and that suspension of imposition of sentence was adjudged on all four counts. The state of the record in the Court below brought this case under the mandate of this Court in *Andrews*, in which this Court said: "The long-established rules against piecemeal appeals in federal cases and the overriding policy consideration upon which that rule is founded have been repeatedly emphasized by this Court. (Citing cases). The standards of finality to which the Court has adhered in habeas corpus proceedings have been no less exacting. See, e. g. *Collins v. Miller*, 252 U.S. 364, 64 L. Ed. 616, 40 S. Ct. 347. There the court

said that the rule as to finality 'requires that the judgment to be appealable should be final not only as to all the parties but as to the whole subject-matter and as to all the causes of action involved.' 252 U.S. at 370"

The decision in the Court below is in conflict with this decision of this Court, in so far as the lack of an appeal on the part of the petitioner is considered. Under *Andrews* the petitioner was precluded from an appeal.

## III. The Decision Below Is In Conflict With a Decision of This Court on The Right of a Defendant To a Speedy Trial.

One of the most far reaching decisions of this Court in an effort to insure justice and to protect the constitutional rights of a defendant in a criminal trial is found in *United States v. Dinitz*, 424 U.S. 600, 47 L. Ed.2d 267, 96 S. Ct. 1075 (1976). As a hand fits a glove, *Dinitz* applies to the petitioner's allegations. Petitioner relied on *Dinitz* in the Court below and *Dinitz* was ignored below and the rule was in conflict with an applicable decision of this Court.

In *Dinitz* the respondent moved to dismiss the indictment on the ground that a retrial would violate the Double Jeopardy Clause of the Constitution. In *Dinitz* this Court also ruled on the defendant's "valued right to have his trial completed by a particular tribunal." And in this case this Court said: "The Double Jeopardy Clause does protect a defendant against governmental actions



intended to provoke mistrial requests and thereby to subject defendants to the substantial burdens imposed by multiple prosecutions. It bars retrials where 'bad-faith conduct by judge or prosecutor,' *United States v. Jorn*, supra, at 485, 27 L. Ed. 543, 91 S. Ct. 547 threatens the 'harassment of an accused by successive prosecutions or declaration of a mistrial so as to afford the prosecution a more favorable opportunity to convict' the defendant." (Citing cases)

## CONCLUSION

For the reasons herein stated, a writ of certiorari should issue to review the judgment and opinion of the Eighth Circuit.

Respectfully submitted,

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APPENDICES

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APPENDIX A

GUY HAMILTON JONES, SR. PETITIONER

V. NO. LR-76-C-98

UNITED STATES OF AMERICA RESPONDENT

ORDER

On March 23, 1976, the petitioner, Guy Hamilton Jones, Sr. filed his motion under 28 USC 2255 to vacate the sentence adjudged on April 3, 1973, in Criminal Action No. LR-72-CR-8. The sentence imposed on that date included a fine of $5,000 and three (3) years probation. The defendant did not appeal the conviction nor the sentence.

On September 9, 1977, the petitioner filed a motion for ruling on his motion to vacate. The United States Attorney has filed his response thereto on September 12, 1977.

Upon consideration of the motion to vacate, the motion for ruling and the government's response, and a review of the entire proceeding, including the criminal action, the Court is of the opinion that the motion to vacate is without merit and should be denied. Pursuant thereto,

IT IS ORDERED AND ADJUDGED that petitioner's motion to vacate the sentence adjudged in Criminal Action No. LR-72-CR-8 be and the same is hereby denied.

DATED THIS NOVEMBER 3, 1977.

/s/ Oren Harris
United States District Judge



APPENDIX B

JUDGMENT

No. 78-1086 September Term, 1977

Guy Hamilton Jones, Sr., Appellant, vs. United States of America, Appellee. )Appeal from the United States District Court for the Eastern District of Arkansas.

This cause came on to be considered on the original designated record of the United States District Court for the Eastern District of Arkansas and briefs of the respective parties without oral argument.

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

August 4, 1978

No. 78-1086

Guy Hamilton Jones, Sr., *
*
Appellant, *
* Appeal from the United
v. * States District Court for
* the Eastern District of
United States of America, * Arkansas.
*
Appellee. *

Submitted: July 24, 1978
Filed: August 4, 1978
Filed: August 4, 1978

Before GIBSON, Chief Judge, VOGEL, Senior Circuit Judge, and BRIGHT, Circuit Judge.

PER CURIAM.

Guy Hamilton Jones, Sr., appeals from the dismissal of his motion for post-conviction relief under 28 U.S.C. §2255 (1970). We affirm.



An indictment was filed against Jones on February 10, 1972, charging him with tax evasion. His trial began on July 10, 1972. During the course of the trial, the trial court and various federal officials, including members of the United States Attorney's office, were apprised that an attempt had been made to contact a juror on Jones' behalf. Acting on this information, two Assistant United States Attorneys consulted with the Department of Justice and the Intelligence Division of the IRS. The Attorney General approved the use of electronic monitoring and recording devices to gain information and evidence regarding possible obstruction of justice. The surveillance was consented to by the juror who had been the subject of the contact, and began immediately.

On July 18, 1972, the trial court informed the parties of the attempted contact with the juror. Later that same day, at a conference in chambers, the United States Attorney revealed the existence of the electronic surveillance consented to by the juror. Upon hearing this information, the trial court declared a mistrial.

A second trial began on November 27, 1972. On December 4, 1972, Jones filed a motion to dismiss on the ground of double jeopardy, asserting that the mistrial had been improper. The motion to dismiss was denied, and the trial resulted in Jones' conviction. Jones was fined $5,000.00, sentence of imprisonment was suspended, and Jones was placed on probation. Jones paid the fine; he did not appeal the conviction.

Jones subsequently brought a civil action for damages against the United States and against the federal employees and officials involved in the surveillance activity. The district court dismissed the action and we affirmed in *Jones v. United States*, 536 F.2d 269 (8th Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977). We held that the defendant federal employees and officials were shielded from the action under the doctrine of qualified immunity, stating:

> In addition we find that a remand for further factual development of the record is unnecessary here. Unlike the *Scheuer* and *Apton* cases, the extensive and uncontroverted affidavits submitted by the federal defendants to the district court in connection with their motion for dismissal or a summary judgment amply demonstrate requisite knowledge and good faith belief that they were acting lawfully to support a finding of qualified immunity. *See Scheuer v. Rhodes, supra*, 416 U.S. at 1693, 94 S.Ct. 1683, 40 L.Ed.2d 90; *Apton v. Wilson, surpa*, 506 F.2d at 94-95. Those affidavits reveal that the federal officials involved had reliable information that a contact with a juror had been attempted. In response to that information, the officials instigated an investigation in the belief that since a mistrial was mandated by the very fact of that attempt, no additional prejudice could accrue to the defendant by pursuing such investigation. Appellees acted within the scope of their authority with good faith and a reasonable belief that their conduct was lawful. Thus, they are entitled to the protection of the qualified immunity doctrine. [Footnote omitted.]
>
> 536 F.2d at 271-72.



On March 23, 1976, Jones filed the present motion under §2255. This motion asserted two grounds for relief:

> (a) The first trial of defendant in this case resulted in a mistrial on a motion of the trial judge sua sponte on July 18, 1972, and said mistrial was due to conspiratorial, secret and concealed prosecutorial overreachings, excesses and wrongful acts, resulting in a denial to defendant of a speedy and public trial and thereby being in violation of Amendment 6 to the United States Constitution;
>
> (b) The second trial of defendant was prohibited by the provision of Amendment 5 to the Constitution of the United States against double jeopardy.

The district court denied the motion without an evidentiary hearing and Jones has appealed.

Jones, who is an attorney, raised his double jeopardy claim seven days after the second trial had begun. He chose not to appeal the trial court's adverse ruling on the claim. In *Kaufman v. United States*, 394 U.S. 217, 227 n.8 (1969), the Supreme Court noted:

> Where a trial or appellate court has determined the federal prisoner's claim, discretion may in a proper case be exercised against the grant of a §2255 hearing. * * *
>
> Furthermore, the §2255 court may in a proper case deny relief to a federal prisoner who has deliberately bypassed the orderly federal

> procedures provided at or before trial and by way of appeal — e.g., motion to suppress under Fed. Rule Crim. Proc. 41(e) or appeal under Fed. Rule App. Proc. 4(b). *Fay v. Noia, supra*, n. 3, at 438, 9 L.Ed.2d at 868; *Henry v. Mississippi, supra*, n. 3, at 451-452, 13 L.Ed.2d at 414, 415.

Jones has provided no explanation as to why he did not pursue the appeal procedure. There is nothing in his motion or the record that would indicate that the trial court did not consider all the evidence material to his claim. He has not advanced any newly discovered evidence of substance.[1] Under these circumstances, the district court properly refused to entertain Jones' double jeopardy claim in the §2255 proceeding. *See Houser v. United States*, 508 F.2d 509, 515 (8th Cir. 1974); *Armstrong v. United States*, 367 F.2d 821 (7th Cir. 1966); *Boisen v. United States*, 181 F. Supp. 349 (S.D.N.Y. 1960).

We turn to Jones' speedy trial claim. In *Barker v. Wingo*, 407 U.S. 514, 530 (1972), the Supreme Court set out four factors that are to be assessed to determine whether a defendant has been deprived of his right to a speedy trial; "Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." The record and the briefs, examined in

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1. Jones attached to his §2255 motion a number of affidavits containing testimony of the federal officers and employees involved in the jury tampering investigation. These affidavits describe the conduct of that investigation. They add nothing of substance to the report of the investigation that was developed for the record during the in-chambers conference preceding the *sua sponte* declaration of mistrial.



light of these standards, show that the declaration of the mistrial and the timing of the second trial did not violate Jones' Sixth Amendment Rights.

At no time during the criminal proceedings did Jones assert his right to a speedy trial. Jones has claimed no specific prejudice to his ability to defend himself. He has alleged nothing of substance that would indicate that the government acted in an attempt to delay his trial. Finally, the length of time between the first and second trials, less than five months, was not substantial.

Accordingly, the dismissal of Jones' §2255 motion is affirmed.

## APPENDIX C

NO. LR-76-C-98

MOTION TO VACATE JUDGMENT
AND DISCHARGE DEFENDANT

ATTACKING SENTENCE IMPOSED
BY THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
IN CASE NO. LR-72-CR-8

Pursuant to Section 2255 of Title 28, United States Code, defendant shows to the Court:

1. Defendant is on probation until April 3, 1976, in the Eastern District of Arkansas, United States District Court.

2. Sentence in this case was imposed by the Honorable Oren Harris in the Western Division of the Eastern District, United States District of Arkansas.

3. The offenses for which sentence was imposed were two counts of income tax evasion and two counts of fraud, being two violations of Title 26 U.S.C. §7201 and two violations of Title 26 U.S.C. §7206 (1).

4. Sentence was imposed on April 3, 1973, in which the United States of America was awarded judgment against defendant in the sum of $5,000.00 on Count I, and there was entered a suspension of imposition of sentence on each of the four counts.

5. A finding of guilty by a jury after a plea of not guilty.

6. Defendant did not appeal from the judgment or conviction.

7. The sentence imposed on the defendant was invalid on the following grounds:

(a) The first trial of defendant in this case resulted in a mistrial on a motion of the trial judge sua sponte on July 18, 1972, and said mistrial was due to conspiratorial,



secret and concealed prosecutorial overreachings, excesses and wrongful acts, resulting in a denial to defendant of a speedy and public trial and thereby being in violation of Amendment 6 to the United States Constitution;

(b) The second trial of defendant was prohibited by the provision of Amendment 5 to the Constitution of the United States against double jeopardy.

8. On May 7, 1975, defendant filed against the United States et al in the United States District Court, Eastern District of Arkansas, Western Division, Cause Number LR 75-C-141. On June 27, 1975, sworn statements were filed in said cause by the defendants seeking a dismissal or in the alternative summary judgment.

9. In support of the grounds set out in Paragraph No. 7(a) defendant presents to the Court:

(a) Exhibit "A" — record of in-chambers discussion prior to declaration of mistrial;

(b) Exhibit "B" — statement of trial court in announcing mistrial;

(c) Exhibit "C" — motion of defendant against double jeopardy before commencement of second trial;

(d) The following exhibits are matters of record as of June 27, 1975 in *Guy Hamilton Jones, Sr. v. United States of America et al*, Cause No. LR-75-C-141, U.S. District Court, Eastern District of Arkansas, Western Division:

Exhibit "D" — Affidavit of Lynn Davis, United States Marshal;

Exhibit "E" — letter from R. A. Nossen, Acting Director, Intelligence Division, Internal Revenue Service;

Exhibit "F" — Sworn statement of Russell James, Chief of Intelligence Section, Internal Revenue Service;

Exhibit "G" — Affidavit of Walter Riddick, Assistant United States District Attorney;

Exhibit "H" — Sworn statement of James Mixon, Assistant United States District Attorney in charge of court proceedings against defendant;

Exhibit "I" — Sworn statement of United States District Attorney for the Eastern District of Arkansas, W. H. Dillahunty.

In support of Paragraph 7(b) defendant states that jeopardy attached in the first trial of defendant in the course of trial before a jury of eleven (11) days duration.



10. Defendant has not previously filed petitions for a habeas corpus, motion under §2255 of Title 28 U.S.C., or any other applications, petitions or motions with respect to this conviction or the grounds set forth in Paragraph 7.

11. Defendant was represented by an attorney during the course of arraignment, plea, trial, sentencing and all other proceedings herein.

12. The attorney who represented defendant as set forth in Paragraph 11 above was the Honorable Leon B. Catlett, Pyramid Life Building, Little Rock, Arkansas.

WHEREFORE, defendant moves the Court that it order and direct a hearing on this motion and that, after such hearing, the judgment herein be vacated and set aside and that the defendant be discharged.

/s/ Guy Hamilton Jones, Sr.
Guy Hamilton Jones, Sr.
Attorney Pro Se

CASE NO. LR-72-CR-8

EXHIBIT "A"

CONFERENCE IN CHAMBERS
PRECEDING DECLARATION OF MISTRIAL
JULY 18, 1972

Present during the conference were United States District Judge J. Smith Henley; Mr. W. H. Dillahunty, United States Attorney; Mr. James Mixon and Mr. Robert Fussell, Assistant United States Attorneys; Mr. Leon B. Catlett, Attorney for the defendant, and the defendant, Mr. Guy Hamilton Jones, Sr.; and Mr. Lynn Davis, United States Marshal.

(At 12:00 Noon on Tuesday, July 18, 1972, the following proceedings were had in chambers;)

THE COURT: Gentlemen, on the record. I want to make a report to you that I am not sure I ought to make, or I am required to make, but, in order to give you the advantage of the information the Court has about what might be a jury problem, I think I better tell you now and then you can do as you please. I hope you do nothing, but then that is up to you.

Late last week — I guess it was on Friday, either late Thursday or on Friday — it was reported to me that one of our male jurors had had a visitor to his home calling in the interest of Mr. Jones in this case. The juror was not home. The visitor was advised by the juror's



wife that it wouldn't be a good idea, or it might not be a good idea for the subject to be discussed with the juror, and so the visitor left. I learned the visitor's name, but I don't now recall it.

The next day, sometime during the day, as I recall, the visitor had occasion to see the juror and said, in substance, to him, "I'm sure glad I didn't see you last night. I might have made a mistake." Or something along this line.

Now, that ended the conversation, as far as I know. There has been nothing else occurred. I think that is substantially it. Anyway, the juror reported, as I have instructed jurors to do if anybody undertakes to talk to them about the case, either report it to the marshal or one of his deputies, and the marshal will, in turn, report it to me. There may be a little bit more to it than that, but that is the substance of it.

On Monday morning, one of the lady jurors reported to the marshal that she might not have told me the entire truth on voir dire and she was disturbed about it. So, I spoke to her before the session began on Monday and learned that she had visited her mother — that is, the juror had visited her mother over the weekend, on Sunday — at Almyra, which was the childhood home of Mrs. Jones. The juror learned from visiting with her mother that some of Mrs. Jones' relatives knew her mother and, indeed, she knew some of them. The juror was concerned because on voir dire she responded that she didn't have any association with these people, or any

association with anybody on either side. There was no discussion about the merits of the case, as far as I know. I don't think this episode has any significance, but, since I have reported the one I thought I would report the other. The juror assured me that there wasn't anything about this information that would affect the trial one way or the other, and I think she is telling the truth. In fact, I think the lady was simply concerned that she might not have told me the truth on voir dire and she wanted to set the record straight.

Now, Mr. Davis, so far as the report from the male juror is concerned, have I left out anything of substance?

MR. DAVIS: No, sir, except that it has been brought to my attention that one of the jurors has made statements in the presence of other jurors back in the jurors' room concerning — well, such as was reported to me, quote, "You can't believe a damn thing those Revenue men tell you. They would lie just as well as tell the truth."

THE COURT: Was this one juror speaking to the other jurors?

MR. DAVIS: Yes, sir.

THE COURT: All right. Of course, I prefer that they not discuss the case at all, but then they will do that. I was referring to the particular episode about the



night visitor to the home of the juror. Have I left out anything?

MR. DAVIS: No, sir. That pretty well covers it.

THE COURT: Now, gentlemen, I tell you these things not because I think that there is any ground for a mistrial, but because it is possible that, because it is your choice to make and not mine, one or the other side may wish for a mistrial. I don't expect you to do anything at the moment. If you want to think about it, that's all right, but I thought you ought to know.

MR. CATLETT: Judge, I am disturbed about it, of course, because whoever the fellow was, or whatever he did, which doesn't appear to be anything, but still it might have prejudiced that juror, whoever he is.

THE COURT: Well, I think I probably ought to go ahead and tell you the names of these two jurors, if I can recall them. The lady juror, I believe, is the No. 2 juror. I don't have my chart in front of me, but she is the No. 2 juror. The seating chart will show her name. The male juror's name is Taylor.

I want to make sure you understand this. By no means should counsel or their clients or associates make any mention of what I have said here to you in chambers to a juror here in the course of this trial because that would be disastrous. I would have to declare a mistrial on motion for such mistrial. I would hate to have to do

that because we have too much time invested in this trial.

At any rate, as I said at the beginning, I don't think there is anything here that warrants a mistrial, but I thought I ought to report it to you because, in the last analysis, it is up to counsel to move for mistrial if one is needed, or seek some other corrective action. I shouldn't bear that responsibility alone.

MR. CATLETT: Of course, you know I don't want to go through another trial.

THE COURT: As I said, I am not requiring you to do anything at the moment. I just wanted to inform you.

MR. CATLETT: I would like to talk to Mutt about it.

THE COURT: Very well. I'm not putting any muzzle on you.

MR. CATLETT: I don't want to talk to anybody else.

THE COURT: Certainly, you shouldn't talk to a juror about it.

MR. CATLETT: Of course, not.



THE COURT: Now, gentlemen, I have told you all I know, and I imagine it is time to recess for lunch. If you decide you want to make any kind of motion, on either side, you know how to do it. I don't expect any answer immediately but, by the time the day is over, you ought to do anything you are going to do before we close up today.

MR. MIXON: I was wondering if it was possible if we could wait until After Mr. Jones' testimony to say what we might want to do, if anything.

THE COURT: Well, at the close of business today, we will have a session and that will give you time to think about it.

(THEREUPON, at 12:10 o'clock p.m., a recess was taken until 2:00 o'clock p.m., at which time the trial resumed in open court. At 2:15 o'clock p.m., the Court, counsel for the parties and the defendant retired to chambers, where the following proceedings occurred:)

THE COURT: Gentlemen for the Government, what is the purpose of this request for a recess?

MR. DILLAHUNTY: Your Honor, I am not actively engaged in the trial of this case, but, of course, I am charged with the responsibility in any cases the Government has.

THE COURT: You are the United States Attorney.

MR. DILLAHUNTY: Yes, sir. I think it is only fair to say, Your Honor, that at an earlier session you pointed out about the juror, Mr. Taylor, having made a comment to the marshal about someone approaching him, and I think I need to add something to that for the record.

On last Friday, when the marshal was contacted by this juror, this was brought to our attention and we were told by the marshal that Mr. Taylor had informed him, the marshal, that his wife had been approached and that Mr. Overton had wanted to talk to Mr. Taylor about the Mutt Jones case. After this information was received, we informed the Chief of the Intelligence Division, Mr. Russell James, and we asked him to investigate this case as a possible jury tampering case. Mr. James, along with other agents from the Internal Revenue Service, with the complete cooperation of Juror Taylor, undertook serveillance of Mr. Taylor's house in order to witness any possible contacts or future contacts with Mr. Taylor about this trial. This surveillance has been conducted as late as this morning. It has produced negative results. Mr. Taylor gave the information about Mr. Overton as being the person who contacted his wife and said that Mr. Overton was the chief pilot for Jack Stephens, that Mr. Overton indicated to Mr. Taylor's wife that he was reluctantly seeking to approach Taylor and that he had been requested to do so by Mr. Skeeter Dickey. Mr. Skeeter Dickey is known to Mr. Taylor to be a very close associate of Jack Stephens, and I am informed that — and I do not have the papers to show that — but I am informed that Jack Stephens is



president of the Little Rock Airmotive, where this man works.

I think it is only fair to bring it all out and say that this juror has cooperated with us in an effort to try to find out what this deal was. And I think, since the Government has the burden of not only seeing that a trial is fair, but to make sure that it even appears to be fair, that we need to advise the other side of this.

THE COURT: Let me see if I understand, Mr. Dillahunty. Either on or after Friday of last week, as the Court understands it, agents of the Government have discussed this matter, or the matter of s. veillance, with Mr. Taylor?

MR. DILLAHUNTY: Yes, sir, to the extent that he permitted his house to be under surveillance and permitted his house to have a recorder in an effort to try to obtain information if he was contacted again. But, as I pointed out, the result was negative. He talked with the United States Marshal.

THE COURT: We will have to take one case at a time. What does this do, the effect of this conference, if I may call it that, with Mr. Taylor? What does that do to the effectiveness of this particular jury in the Jones case?

MR. DILLAHUNTY: Your Honor, I could, of course, not answer that question. I have not talked to Mr. Taylor and I don't think either of the assistants who

have conducted this trial certainly have not talked to him. Of course, if I were going to try to guess, I think it could go either way. The man may have resented it. It may have amounted to nothing. No other attempt has been made to contact him, but at least counsel for the defendant is entitled to know that this did occur, and it was brought to my attention by Mr. Mixon and Mr. Fussell, and we discussed it at length and thought it necessary to advise the Court and the other side of this.

THE COURT: What position is the Government in in contacting a juror during the course of a prosecution? I can understand putting a watch on his house to see if anybody else showed up, but I have some problem about advising the juror that it is going to be done. It gives me a little trouble. I'm talking about as it affects this particular jury. What do you think, Mr. Catlett?

MR. CATLETT: Well, Judge, I think my reaction is that the juror would probably vote against us. I sure hate to go through another long trial. All of us do, of course. It's been a long trial, and it is an expensive trial. Could the Court — I'm just asking now — could the Court excuse him and use the alternate juror? Would that be possible or would that —

MR. DILLAHUNTY: Your Honor, I —

THE COURT: Just a minute. I'm afraid that — you see, I don't have any way of knowing, without completely messing up the possibility of having an



unbiased jury, I don't really know what communications there may have been between Mr. Taylor and his fellow jurors on this subject.

MR. DILLAHUNTY: Of course, I have no way of knowing that either, Your Honor. I might say this, too, Your Honor. Something else comes to my mind, at least an innuendo, if you can call it that, and that is what is left with Mr. Taylor with reference to his job? That might possibly be involved. My understanding is that his reaction to that was that his job wasn't worth it, or some reference to that effect. Of course, it's a sad thing that these things occur.

MR. CATLETT: Well, I would say definitely that Taylor would not — I would think he wouldn't vote for us regardless of the evidence, under these circumstances. I don't know. Guy, what do you think?

THE DEFENDANT: I don't know what to think. I am sitting here where I can't be objective. I never heard of Taylor. I don't know Overton. I really don't know what to think. This is all new to me.

MR. DILLAHUNTY: Of course, it's all new to us, too, Mr. Jones.

THE DEFENDANT: It's totally new to me.

THE COURT: You understand, I'm not trying to draw any inferences at the moment beyond the four corners of this particular case we are trying. I want to

try one at a time. I would like to get to try one, and then reach another one if, as and when we have it. Gentlemen, I am really afraid to do anything other than mistrial this case. I hate to do it. We have got seven hard days put into it, in the trial. I am afraid that with the contacts that have been made that Taylor, regardless of what his reaction is, could not view this evidence objectively. I'm afraid that he would have a tendency to lean over backwards one way or the other, and you can think around the circle and you still don't know where he would fall. But, his having been approached and had this matter discussed with him, and then his having participated, passively of course, in a surveillance, I'm afraid it has put him in the position where he would either feel obliged to lean over backwards one way or the other in order to show he is impartial, and this, of course, I don't want him to do. I want him to decide the case according to the law and the evidence. Now, I don't know whether he would turn out to vote for conviction or against, but I'm afraid that we simply cannot have any confidence in his verdict, or that of the jury. I'm just afraid of it.

Now, let's go off the record for a moment.

THEREUPON, there was a discussion off the record among the parties, after which the Court and counsel for the parties and the defendant returned to the courtroom.)

*****



CASE NO. LR-72-CR-8

EXHIBIT "B"

COMMENTS OF COURT
IN DECLARING MISTRIAL
July 18, 1972

(The following occurred in open court after a conference in chambers between the Court and the parties:)

THE COURT: Members of the jury, the case has reached the stage at which the Court thinks some action is called for by the Court to terminate the trial. Because of certain efforts which have been made in recent days by persons who are not directly connected with the trial to make some extrajudicial presentations to members of the jury, the Court is afraid that it would be difficult in the circumstances for the Court and jury to give both the Government and the defendant a completely objective and fair trial to which they are entitled.

In coming to this conclusion, the Court wants to make it extremely clear that it is not impuning the motives or the conduct of any person now in the box. On the contrary, the members of the jury have been most cooperative in following the instructions of the Court and have been completely candid, and the Court appreciates their attitude and candor. However, when extrajudicial approaches are made to a jury — and the Court again

wishes to emphasize that it is not charging Mr. Jones with having made any — when these things continue a question arises as to whether the Court ought to let the trial go to a conclusion. In all probability, this jury could reach a fair and impartial verdict, but the risk is too great. The Court simply cannot afford the risk. And so, even though we are well into the second week of trial, the Court has concluded that it must declare a mistrial. The Court now does so. The members of the jury are discharged when we recess, as we will in a few minutes. You will be excused subject to call. There will be other cases and other days and other trials.

The Court would suggest that since it is necessary to undertake to try this case again — not to any of you, but to another panel at an early date — that it would be much easier for the next judge and jury to try this case — and I don't know if it will be me or not, but it certainly will be another jury — it will be much easier for the next judge and jury who are obliged to try this case to give a fair trial if the members of this jury do not discuss with anyone, except in response to a lawful subpoena or a lawful investigation, that you do not respond to any questions concerning any extrajudicial activity on your account by you in connection with this case.

The defendant may stand on his present bond, whatever it is. The Court doesn't suspect that he's about to run off.

Gentlemen, when we can, we will reschedule the case for trial.



You may recess the court. The jury will be excused subject to call.

*****

EXHIBIT "C"

NO. LR-72-CR-8

MOTION TO DISMISS ON GROUND OF DOUBLE JEOPARDY

The defendant moves dismissal on the ground of double jeopardy, and states:

That the Indictment herein was returned on February 10, 1972; that trial of the Defendant on said Indictment commenced on July 10, 1972, and proceeded until July 18, 1972, when the trial Judge, over the objection of the defendant, aborted the proceedings; that prior to such sua sponte action of the trial Judge, the defendant offered to proceed with the trial with a jury composed of eleven members; that the said action of the trial Judge was not in the interest of the defendant, but unfairly aided the prosecution and unduly harassed the defendant; and that the defendant has been deprived of his valued right to have his trial completed and then and there end the dispute.

WHEREFORE, defendant moves the Court for dismissal of this case on the ground of double jeopardy.

EXHIBIT "D"

NO. LR-75-C-141

AFFIDAVIT

I, Lynn A. Davis, duly sworn, depose and state as follows:

1. I was sworn in as United States Marshal for the Eastern District of Arkansas in January of 1970 and served in that capacity until January 17, 1975.

2. I have read and familiarized myself with the allegations contained in the complaint in the case of *Guy Hamilton Jones, Sr. v. United States of America and W. H. Dillahunty; et al.*, No. LR-75-C-141.

3. I make the following statements which are true and correct to the best of my knowledge and belief:

(a) In the trial of *United States v. Guy Hamilton Jones, Sr.*, LR-72-CR-8, I was assisting the Court in my official capacity as United States Marshal and was responsible for the security of the jury at the instructions of the Court.

(b) As is customary Judge J. Smith Henley, Trial Judge in the Jones case, advised the jury to report any irregular contacts concerning the trial to the United States Marshal.



(c) On July 14, 1972, at some time prior to 9:00 A.M., Floyd Taylor, a juror in the Jones trial, came to my office. He advised me that some time during the night before, Ray Overton Chief Pilot for Stephens Inc., his employer, had contacted his (Taylor's) wife. Overton asked where Taylor could be located. She advised Overton that Taylor was working on an airplane at the North Little Rock Airport. She then asked Overton why he wanted to contact Taylor. Overton told her that Skeeter Dickey had wanted him to talk to Taylor about the Mutt Jones trial. Taylor's wife, according to Taylor, told Overton that she felt that it would be a mistake as Taylor took the jury duty seriously. Overton then left.

(d) I immediately advised Judge Henley of Taylor's statement and, upon his instructions, advised the office of the United States Attorney of the matter.

(e) The United States Attorney's office requested that I obtain the permission of Juror Taylor for agents of the Internal Revenue Service to place him under surveillance. Juror Taylor gave his permission and I introduced him to said agents.

4. All of my acts in the above-related activities were conducted in the course of my official employment as United States Marshal for the Eastern District of Arkansas.

5. In no way have I engaged in a conspiracy against the plaintiff, nor do I have any knowledge of any alleged conspiracy against him, and I deny each and

every allegation in the plaintiff's complaint which purports to allege my knowledge of or participation in any such conspiracy.

/s/ Lynn A. Davis
Lynn A. Davis

EXHIBIT "E"

INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224
Date: July 14, 1972
In reply refer to: CP:I:O

Honorable Henry E. Petersen
Assistant Attorney General
Criminal Division
Department of Justice
Washington, D. C. 20530

Dear Mr. Petersen:

Re: Use of Electronic Listening Device

Guy J. Jones, an attorney from Conway, Arkansas, is currently being tried in the Eastern District of Arkansas on charges of tax evasion and for filing false and fraudulent tax returns. This is a jury trial before Judge J. Smith Henley.

One of the jurors in this trial is Burt Taylor who is a mechanic for Airmotive, Inc., Little Rock, Arkansas.



On the evening of July 13, 1972, Roy Overton, chief pilot for Airmotive, Inc., visited the home of Burt Taylor and attempted to contact Taylor. Taylor was not at home but Overton did converse with Mrs. Taylor and gave the impression that he, Overton, was there for the purpose of pursuading or otherwise convincing Taylor to vote for the acquittal of Guy Jones. Overton is, in effect, the employer of Taylor and therefore is in the position to exert economic pressure on him.

This information was relayed to the United States Attorney for the Eastern District of Arkansas and to Judge Henley. The U. S. Attorney has notified Mr. Fred Folsom, Tax Division, Department of Justice and everyone is in agreement that the Internal Revenue Service should take action in this apparent attempt to obstruct justice by influencing a juror.

The juror, Taylor, has agreed to allow the installation of electronic monitoring and recording devices on his person or any other method that will be necessary to prevent this obstruction of justice.

In order to prevent the apparent obstruction of justice, we request that the Attorney General authorize Service agents to electronically monitor and record all conversations that take place between Burt Taylor, the juror; Roy Overton; Skeeter Dickey, the man who apparently acted as go-between to get Overton to contact Taylor; and Guy J. Jones, the defendant.

At 11:00 a.m. July 14, 1972, the Chief, Intelligence Division, Little Rock District was verbally authorized to proceed with the installation of the required equipment.

Very truly yours,

/s/ R. A. Nossen
R. A. Nossen
Acting Director, Intelligence Division

Approved for the period July 14, 1972 through August 13, 1972.

/s/ Russell G. Kleindienst
Russell G. Kleindienst
Attorney General

7/14/72
Date

EXHIBIT "F"

NO. LR-75-C-141

AFFIDAVIT

I, R. Russell James, being duly sworn, depose and state as follows:

1. I have been Chief of the Intelligence Division of the Internal Revenue Service at the Little Rock District Office since January, 1966.



2. I have read and familiarized myself with the allegations contained in the complaint filed in the United States District Court, Eastern District of Arkansas, in the matter of *Guy Hamilton Jones, Sr. v. United States of America and W. H. Dillahunty, et al.*, No. LR-75-C-141.

3. That the following statements I make are true to the best of my knowledge and belief.

4. At the request of the United States Attorney's office, Eastern District of Arkansas, I conducted an investigation into possible jury tampering on behalf of the plaintiff Guy Hamilton Jones, Sr.

5. I was advised by Assistant United States Attorney Walter G. Riddick that a juror named Floyd Taylor had reported to the United States Marshal that an attempt had been made to contact him about the trial at which he was sitting as a juror with the possibility that that individual would try to influence his decision as a juror; further, that the person who had contacted his wife indicated that he would return later to contact the juror himself.

6. Mr. Riddick informed me that the Justice Department was requesting that the Internal Revenue Service conduct a jury tampering investigation and an authorization for the Internal Revenue Service to use electronic recording devices in maintaining surveillance of the juror from the United States Attorney General. I made telephone calls through our regional office and

verified the fact that the request had been made and approval granted to conduct the electronic surveillance. I subsequently obtained a copy of a memorandum wherein the Attorney General had given this authorization.

7. I, and special agents under my supervision, proceeded with the investigation and surveillance. On Friday evening, July 14, 1972, we met the juror Floyd Taylor in his home and obtained his permission to install a tape recorder in his residence for the purpose of recording any conversation or telephone calls in the event an attempt was made to contact him in his residence. We also obtained Mr. Taylor's permission to place a transmitting device on his person while he was at work on Saturday, July 15. We met with Taylor on his way to work, installed the device, and monitored its transmissions during the period he was at work on Saturday. After he returned to his residence on Saturday, he was instructed so that he could turn the tape recorder on in the event he was contacted by telephone or by someone coming to his home. The recorder was removed on Tuesday, July 18, 1972.

8. I, at no time, have engaged in any alleged conspiracy against the plaintiff, nor do I have any knowledge of any alleged conspiracy against him, and I deny each and every allegation in plaintiff's complaint which purports to allege my knowledge of or participation in any such conspiracy.



9. All of my acts in this matter were conducted in the course of my official duties as Chief of the Intelligence Division of the Internal Revenue Service, Little Rock District Office, and as an employee of the Federal Government.

/s/ R. Russell James
R. Russell James

EXHIBIT "G"

NO. LR-75-C-141

AFFIDAVIT

I, Walter G. Riddick, being duly sworn, depose and state as follows:

1. I was appointed Assistant United States Attorney for the Eastern District of Arkansas on November 14, 1955 and continue to serve in that capacity.

2. I have read and familiarized myself with the allegations contained in the complaint in the case of *Guy Hamilton Jones, Sr. v. United States of America and W. H. Dillahunty, et al.*, No. LR-75-C-141.

3. I make the following statements which are true and correct to the best of my knowledge and belief:

(a) About 9:00 A.M. on July 14, 1972, United States Marshall Lynn A. Davis and Special Agent James Dixon of the Internal Revenue Service informed me that a juror in the trial of the *United States v. Guy Hamilton Jones. Sr.*, LR-72-CR-8, had been approached about the trial through the juror's wife. This man, whose name was Ray Overton, was in a position to exert economic influence on the juror. Further, the United States Marshal informed me that the man who had contacted the juror's wife had indicated that he would return to see the juror himself.

(b) I informed Assistant United States Attorneys Robert F. Fussell and James G. Mixon, who were prosecuting the case, of the above events, and we were of the opinion that a mistrial had already occurred.

(c) I contacted Fred Folsom, Chief of the Criminal Section of the Tax Division of the Department of Justice, and related the above information to him.

(d) Folsom agreed that a mistrial had occurred when the juror learned of the contact with his wife. We also agreed that it was our duty to try to catch Overton and record his conversation if he should contact the juror again. Folsom told me to instruct the Internal Revenue Service to start whatever procedures were necessary to do this. I gave those instructions to James Dixon and Russell James.

(e) When the United States Attorney, W. H. Dillahunty, returned to Little Rock on Friday evening, I related the above events to him.



(f) I had no contact with juror Floyd Taylor at any time.

4. All of the above-related activities were done in the scope of my official duties as Assistant United States Attorney for the Eastern District of Arkansas.

5. In no way have I engaged in a conspiracy against the plaintiff, nor do I have any knowledge of any conspiracy against him, and I deny each and every allegation in the plaintiff's complaint which purports to allege my knowledge of or participation in any such conspiracy.

/s/ Walter G. Riddick
Walter G. Riddick

EXHIBIT "H"

Civil No. LR-75-C-141

AFFIDAVIT

I, James G. Mixon, being duly sworn, depose and state as follows:

1. I was appointed Assistant United States Attorney for the Eastern District of Arkansas on July 8, 1969, and served in that capacity until February 16, 1973.

2. I have read and familiarized myself with the allegations contained in the complaint in the case of *Guy Hamilton Jones, Sr. v. United States of America and W. H. Dillahunty, et al.*, No. LR-75-C-141.

3. I make the following statements which are true and correct to the best of my knowledge and belief:

(a) In the trial of *United States v. Guy Hamilton Jones, Sr.*, LR-72-CR-8, I was assisting in the trial prosecution of the Government's case.

(b) On Friday, July 14, 1972, shortly before trial commenced for that day, I was informed that a juror's wife had been contacted about the case; however, before I could elicit additional information, the trial judge entered and I was required to participate in the trial until a recess which occurred sometime in the late morning.

(c) During the recess I consulted with Mr. Walter Riddick, Mr. Robert Fussell, Mr. Russell James, Mr. James Dixon, Mr. James Brown, Mr. Lynn Davis, and others, and I was advised that a juror named Bert Taylor had advised the United States Marshal Lynn Davis that a Mr. Ray Overton had contacted Taylor's wife and had inquired about the Guy Jones trial; that Mr. Overton had stated to Mrs. Taylor that he would contact Taylor later.



(d) I was advised further that the Department of Justice had authorized the Internal Revenue Service to place Mr. Taylor under surveillance in an effort to apprehend Mr. Overton in the act of jury tampering, and that this surveillance was to be accomplished by the use of some type of electronic device and that it would be done with the permission of the juror. I agreed and concurred that the proposed actions were appropriate and requested that I be kept advised.

(e) The United States Attorney W. H. Dillahunty was not present in the city at the time and I was unable to contact him until in the middle of the afternoon whereupon I advised him of the development in the case and of the authority given by the Department of Justice and of our proposed actions. He agreed that our actions were appropriate.

(f) I had no further participation in the efforts to apprehend Mr. Overton and I never had any contact with any juror during the course of the trial.

(g) On Tuesday, July 18, 1972, I consulted with Mr. W. H. Dillahunty and Mr. Robert F. Fussell and I was advised, as I had been on a daily basis since Friday, July 14, that there had been on further contact with the juror, and we all agreed that the United States Attorney should inform the defendant of the developments as outlined above, on the record, and in the presence of the Court.

(h) I had assumed from the moment I heard of the contact with the juror that the case had been effectively mistried, either by the defendant or by someone on his behalf.

4. All of my acts in the above-related statement were conducted during and in the course of my official capacity as Assistant United States Attorney, and I did not engage in a conspiracy against the plaintiff nor do I have any knowledge of any conspiracy against him.

5. My purpose in participating in the events outlined, to the extent that I did so, was to assist in the apprehension of Ray Overton or anyone else who would attempt to tamper with a jury for or on behalf of the defendant in that case, Guy H. "Mutt" Jones, Sr.

/s/ James G. Mixon
James G. Mixon

EXHIBIT "I"

NO. LR-75-C-141

AFFIDAVIT

I, W. H. Dillahunty, being duly sworn, depose and state as follows:

1. I was appointed United States Attorney for the Eastern District of Arkansas on April 1, 1968 and continue to serve in that capacity.



2. I have read and familiarized myself with the allegations contained in the complaint in the case of *Guy Hamilton Jones, Sr. v. United States of America and W. H. Dillahunty, et. al.*, No. LR-75-C-141.

3. I make the following statements which are true and correct to the best of my knowledge and belief:

(a) On the morning of Friday, July 14, 1972, I was out of the office when the trial of *United States v. Guy Hamilton Jones, Sr.*, No. LR-72-CR-8 was taking place.

(b) Later that evening I received a call from Assistant Untied States Attorneys Walter G. Riddick, James G. Mixon and Robert F. Fussell, who had advised me that the Marshal had reported that someone had contacted the wife of a juror and was attempting to influence the juror's decision in the Jones trial. Further, that the juror had indicated that the man would return to see him.

(c) The Assistant United States Attorneys further advised me that the Attorney General of the United States had authorized an investigation into an obstruction of justice and that the consent of the juror had been obtained in setting up surveillance in order to corroborate any contacts and statement made to the juror in the event that he was contacted again by this individual.

(d) After having been informed on Tuesday morning, July 18, 1972, that the surveillance had not produced any further attempts to influence a juror, Floyd Taylor, I advised the Court and the parties on record that surveillance had been placed on the juror, with the juror's consent, in order to obtain any evidence in the event another attempt was made to influence the juror.

(e) I had no contact with the juror or active participation in the investigation of the possible obstruction of justice.

4. All of my acts in the above-related activities were conducted in the scope of my official employment as the United States Attorney for the Eastern District of Arkansas.

5. In no way have I engaged in a conspiracy against the plaintiff, nor do I have any knowledge of any alleged conspiracy against him, and I deny each and every allegation in the plaintiff's complaint which purports to allege my knowledge of or participation in any such conspiracy.

/s/ W. H. Dillahunty



APPENDIX "D"

28 U.S.C. §2255 (Pertinent Parts)

28 U.S.C. §2255: FEDERAL CUSTODY; Remedies On Motion Attacking Sentence.

"A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall

vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.***"

## APPENDIX "E"

## AMENDMENT 5, UNITED STATES CONSTITUTION

[Criminal actions—Provisions concerning—Due process of law and just compensation clauses.]—"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

## APPENDIX "F"

## AMENDMENT 6, UNITED STATES CONSTITUTION

[Rights of the accused.]—"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previuosly ascertained by law,



and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."